

REMARKS

Claims 1 and 3-50 are currently pending in the subject application and are presently under consideration. Claims 10, 17 and 36 have been amended as shown on pp. 4, 6 and 10 of the Reply. Entry of the amendments is respectfully requested since they do not require further searching, and/or place the subject application in condition for allowance.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Rejection of Claims 10-29 and 36-50 Under 35 U.S.C. §101

Claims 10-29 and 36-50 stand rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. This rejection should be withdrawn for at least the following reasons.

Independent claims 10, 17 and 36 have been amended to recite a *computer readable medium embodied with* a computer program, defining clearly structural and functional interrelationships between the computer program and the other elements, and, permitting the computer program's functionality to be realized. The active messaging client software, active messaging gateway software and data structures recited in claims 10, 17 and 36 are structurally and functionally interrelated to the computer-readable medium and thus statutory subject matter. Therefore, this rejection should be withdrawn.

II. Rejection of Claims 10-14, 16, 17, 22, 24-26, and 28-29 Under 35 U.S.C. §102(e)

Claims 10-14, 16, 17, 22, 24-26, and 28-29 stand rejected under 35 U.S.C. §102(e) as being anticipated by Alanara *et al.* (U.S. 6,292,668 B1). This rejection should be withdrawn for at least the following reasons. Alanara *et al.* does not disclose or suggest each and every aspect set forth in the subject claims.

A single prior art reference anticipates a patent claim only if it *expressly or inherently describes each and every limitation set forth in the patent claim.* *Trintec Industries, Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 63 USPQ2d 1597 (Fed. Cir. 2002); *See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631,

2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The *identical invention must be shown in as complete detail as is contained in the ... claim*. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) (emphasis added).

Applicants' claimed subject matter relates to an active messaging system that provides interpretation and execution of an active message script that is included in a short text message received at a digital cellular telephone by radiant transmission. In particular, independent claims 10 and 17, as amended, recite similar aspects, namely an *active message script transmitted from an active message gateway* to a mobile phone *where it is installed*. Alanara *et al.* does not disclose or suggest these novel features.

Alanara *et al.* relates to a communication network terminal that supports a plurality of applications and has a means of communicating user messages. In particular, the communication terminal receives user messages comprising *data and a header* relating to an application and addresses the data to an already installed application according to the header. Alanara *et al.* recites specifically, a system to transmit and receive data related to an application, however, Alanara *et al.* is silent with regard to an *active message gateway* that can transmit an active message script to a mobile communication device. Furthermore, Alanara *et al.* does not teach or suggest a method to install an application onto a mobile communication device *via* active messages. For example, menu creation is controlled and implemented by a processor and a Menu application that is *stored in the memory* in the terminal and run by the processor. The Menu application itself is not installed employing user messages. (See column 11, lines 64-67). Alanara *et al.* discloses a system that supports a set of applications that have already been installed and provides data to these applications by employing user messages. However, Alanara *et al.* fails to disclose an active message script transmitted from an active message gateway to a mobile phone where it can be executed and an application can be installed.

Applicants' claimed subject matter, in contrast, discloses a system wherein an active message script is transmitted from an active message gateway to a mobile cellular phone, wherein a selected application associated with the active message script can be installed on the mobile phone. As an example, a user can select an application to

download from the active message gateway, by transmitting an “Install” command via an active message. In response to this, the active message gateway returns a list of available applications that the user can download. The application or service selected by the user is then transmitted to the mobile telephone as one or more active messages and installed. From this point, the application can be executed by the user within the mobile phone. (See page 8, paragraph [0027]). Another example is an interactive guide application. The active message scripts for this application can be downloaded and installed on the mobile telephone and can be executed entirely within the mobile telephone. Furthermore, active messaging enables programming of mobile telephones and installation of distributed applications or parts of them on mobile telephones. (See page 8-9, paragraph [0029]). Alanara *et al.* merely relates to a system that can transmit messages that contain data associated with a particular application and does not teach or suggest a method to install an available application on a mobile telephone *via* one or more active message scripts.

In view of at least the foregoing, it is readily apparent that Alanara *et al.* does not anticipate or suggest the subject invention as recited in claims 10 and 17 (and claims 11-14, 16, 22, 24-26 and 28-29 that depend there from). Accordingly, it is respectfully requested that this rejection be withdrawn.

III. Rejection of Claims 1, 3-9, 30-33, 35-39, 41-46, 49 and 50 Under 35 U.S.C. §103(a)

Claims 1, 3-9, 30-33, 35-39, 41-46, 49 and 50 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Alanara *et al.* (U.S. 6,292,668 B1) in view of Zhang *et al.* (U.S. 7,082,312 B2). This rejection should be withdrawn for at least the following reasons. Alanara, *et al.* either alone or in combination with Zhang *et al.*, does not teach or suggest every feature of the subject claims.

To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to

combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See MPEP §706.02(j). The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. See *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). (emphasis added).

Applicants' claimed subject matter relates to a short text message dynamic service application for mobile communication devices. Independent claims 1, 30 and 36 recite similar aspects, in particular, *an active message gateway that creates active messages containing active message scripts for applications that are transmitted to and installed on the digital cellular telephone*. Alanara, *et al.* either alone or in combination with Zhang *et al.*, fails to teach or suggest this novel feature.

As discussed above, Alanara *et al.* is silent with regard to installation of applications on a mobile communications device *via* active messaging from an active message gateway. Zhang *et al.* relates to a system and method for providing information service for mobile telephones employing short message service. More specifically, the system comprises of a short message service gateway that receives a request for information service, from a mobile telephone, and responds by transmitting results obtained from at least one application server back to the mobile telephone in form of a short message. However, Zhang *et al.* fails to disclose a system that can transmit active messages comprising active scripts that install applications onto the mobile communications device. Thus, Zhang *et al.* does not cure the aforementioned deficiencies presented by Alanara *et al.* with respect to independent claims 1, 30 and 36.

Alanara *et al.* alone or in combination with Zhang *et al.* fail to teach or suggest all features of applicants' invention as recited in independent claims 1, 30 and 36 (and claims 3-9, 31-33, 35, 37-39, 41-46 and 49-50 that depend there from), and thus fails to make obvious the subject claims. Accordingly, it is respectfully requested that this rejection be withdrawn.

IV. Rejection of Claims 15 and 27 Under 35 U.S.C. §103(a)

Claims 15 and 27 stand rejected under 35 U.S.C. §103(a) as being unpatentable

over Alanara *et al.* (U.S. 6,292,668 B1) in view of Comer (U.S. 5,610,973). This rejection should be withdrawn for at least the following reasons.

Claims 15 and 27 depend from independent claims 10 and 17 respectively. As discussed *supra*, Alanara *et al.* fails to disclose all aspects of independent claims 10 and 17. In particular, Alanara *et al.* is silent with regard to an active message gateway that can transmit an active message script that can be employed to install an application, to a mobile communication device. Comer discloses a system and method for automatically detecting the presence of predetermined classes of mobile radiotelephones within a cellular network and interactively communicating with a registering mobile radiotelephone within such classes. Comer fails to remedy the aforementioned deficiencies of Alanara *et al.* with respect to independent claims 10 and 17 since Comer does not anticipate a system that can install applications onto a mobile telephone by employing active messaging. Therefore, it is respectfully requested that this rejection be withdrawn and the subject claims allowed.

V. Rejection of Claims 18-21 and 23 Under 35 U.S.C. §103(a)

Claims 18-21 and 23 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Alanara *et al.* (U.S. 6,292,668 B1) in view of Chen *et al.* (U.S. 2003/0054810 A1). This rejection should be withdrawn for at least the following reasons. Alanara *et al.*, alone or in combination with Chen *et al.*, fails to teach or suggest each and every aspect of the claimed subject matter.

Claims 18-21 and 23 depend on independent claim 17. Chen *et al.* relates to a system that includes a mobile device server, which provides a message gateway to allow mobile devices that use different protocols to relay messages to each other but fails to make up for the deficiencies presented by Alanara *et al.* with respect to independent claim 17 discussed *supra*. Thus, it is respectfully requested that this rejection be withdrawn.

VI. Rejection of Claims 34, 40, and 47 Under 35 U.S.C. §103(a)

Claims 34, 40, and 47 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Alanara *et al.* (U.S. 6,292,668 B1) in view of Zhang *et al.* (U.S.

7,082,312 B2) as applied to claims 30 and 36 above and further in view Chen *et al.* (U.S. 2003/0054810 A1). This rejection should be withdrawn for at least the following reasons. None of the cited references, alone or in combination, teach or suggest all limitations of the subject claims.

Claims 34, 40 and 47 depend from independent claims 30 and 36 respectively. Alanara *et al.* and Zhang *et al.* either alone or in combination, fail to disclose each and every feature of independent claim 30 and 36, as discussed above, and Chen *et al.* does not compensate for such deficiencies when combined with either or both Alanara *et al.* and Zhang *et al.* Therefore, this rejection should be withdrawn.

VII. Rejection of Claim 48 Under 35 U.S.C. §103(a)

Claim 48 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Alanara *et al.* (U.S. 6,292,668 B1) in view of Zhang *et al.* (U.S. 7,082,312 B2) as applied to claims 36 above, and further in view of well known prior art (MPEP 2144.03). This rejection should be withdrawn for at least of the following reasons. The cited references, alone or in combination, do not teach or suggest all aspects recited in the claims.

Claim 48 depends from independent claim 48. As discussed supra, Alanara *et al.* and Zhang *et al.* do not disclose each and every aspect set forth in independent claim 36. The Examiner also takes official notice to the fact that it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a feature of a DeleteUser active message command data structure that deletes a user from a list. Applicants' representative respectfully traverse the aforementioned well known statements and request that the Examiner cite a reference in support of his position pursuant to MPEP 2144.03 if the rejection of the independent claims is maintained.

Based on at least the foregoing, it is respectfully requested that this rejection be withdrawn.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [MSFTP682US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,
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